IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

SLYVIA SAMUELS	:	CIVIL ACTION
	:	
v.	:	
	:	
ALBERT EINSTEIN MEDICAL CENTER	:	NO. 97-3448

MEMORANDUM AND ORDER

HUTTON, J. November 4, 1998

Presently before the Court are Defendant's Motion for Bifurcation of Trial (Docket No. 11), Plaintiff's response (Docket No. 18), and Defendant's reply thereto (Docket No. 20). Also before the Court are Defendant's Motion in Limine (Docket No. 12), Plaintiff's response (Docket No. 19), and Defendant's reply thereto (Docket No. 21). For the reasons stated below, the Defendant's Motion for Bifurcation of Trial is **DENIED** and Defendant's Motion in Limine is **GRANTED IN PART AND DENIED IN PART**.

I. BACKGROUND

Sylvia Samuels ("Plaintiff" or "Samuels") received her Bachelors of Science degree in nursing from Holy Family College. The Defendant, Albert Einstein Medical Center, hired Plaintiff as a medical-surgical nurse in 1986. When Samuels started her employment, the Defendant gave her a copy of its employee handbook. The handbook contained an equal employment opportunity policy, a

progressive discipline policy, and a disclaimer stating that employees remained at-will.

In July 1994, Defendant first disciplined the Plaintiff. Nurses must complete competencies, which are tests that must be completed on a quarterly basis, to maintain their degree. Defendant gave Plaintiff a counseling document, the lowest level of discipline under Defendant's progressive discipline policy, for failing to complete competencies.

In December 1994, Defendant disciplined Plaintiff for the second time. The Hospital assigned Plaintiff to a patient for testing. During the testing, Dr. John H. Wertheimer ordered intravenous fluids for the patient to flush out the dye received during the testing. Plaintiff contends that she was assisting another patient, Debby Chaess, in critical condition at the time. Nevertheless, the Defendant gave her a warning, the second level in Defendant's progressive discipline policy.

In June 1995, Defendant disciplined Plaintiff for the third time. Plaintiff, along with six other nurses, failed to notice that a patient was given the wrong medicine. Defendant disciplined all six nurses, including the Plaintiff. Defendant gave Plaintiff a suspension, the third level in Defendant's progressive discipline policy.

In September of 1995, Defendant disciplined Plaintiff for the fourth and final time. Defendant alleges that Plaintiff sent

a patient with a known heart condition for testing to a lab without a nurse or monitor. Defendant states that this action violated their written policy. As part of the fourth level of Defendant's progressive discipline policy, Defendant fired the Plaintiff.

Subsequently, Plaintiff filed a charge of discrimination with the Equal Employment Opportunity Commission (EEOC). Plaintiff then brought suit claiming that the Defendant discharged her because of her religion in violation of Title VII of the Civil Rights Act (Count I) and breached an implied contract created by its handbook (Count II). Defendant contends that it discharged her for the aforementioned disciplinary reasons. On September 14, 1998, this Court granted summary judgment in Defendant's favor on Plaintiff's breach of implied contract claim (Count II).

On May 22, 1998, Defendant filed a Motion for Bifurcation of Trial and a Motion in Limine to preclude certain evidence of the Plaintiff. Plaintiff filed responses to both of these motions. Because both Motions are ripe for adjudication, this Court considers Defendant's Motion for Bifurcation of Trial and Defendant's Motion in Limine together.

II. DISCUSSION

A. Bifurcation of the Trial

Federal Rule of Civil Procedure 42(b) provides the district courts with authority to sever litigation and try it in separate stages. See Fed. R. Civ. P. 42(b); see also American

Nat'l Red Cross v. Travelers Indemn. Co., 924 F. Supp. 304, 306 (D.D.C. 1996). This Rule states:

> The court, in furtherance of convenience or to avoid prejudice, or when separate trials will be conducive to expedition and economy, may order a separate trial of any claim, cross-claim, counterclaim, or third-party claim, or of any separate issue or of any number of claims, cross-claims, counterclaims, third-party claims, or issues, always preserving inviolate the right of trial by jury as declared by the Seventh Amendment to the Constitution or as given by a statute of the United States.

Fed. R. Civ. P. 42(b). The court is given broad discretion in exercising this power for the fairness and convenience of the parties. See Lis v. Robert Packer Hosp., 579 F.2d 819, 824 (3d Cir. 1978); Idzojtic v. Pennsylvania R.R. Co., 456 F.2d 1228, 1230 (3d Cir. 1972); In re Unisys Sav. Plan Litig., No. CIV.A.91-3067, 1997 WL 299425, at *2 (E.D. Pa. May 29, 1997); Thompson v. Glenmede Trust Co., No. CIV.A.92-5233, 1996 WL 529694, at *1 (E.D. Pa. Sept. 16, 1996).

"A [party] seeking bifurcation has the burden of presenting evidence that a separate trial is proper in light of the general principle that a single trial tends to lessen the delay, expense, and inconvenience to the parties." Mangabat v. Sears Roebuck & Co., No. CIV.A.92-1742, 1992 WL 211561, *1 (E.D. Pa. Aug. 26, 1992). Bifurcation is an "extraordinary remedy" that is not to be routinely ordered. See Lis, 579 F.2d at 824.

In the instant case, Defendant moves for a bifurcation of

the upcoming trial. Defendant argues that the Court should first try the issue of whether Plaintiff timely asserted her administrative claims of discrimination and, thereby, properly exhausted her administrative remedies. Then, if Plaintiff's claim survives this initial stage, the Court should try her claim of discrimination on the merits. The Plaintiff disagrees and argues that bifurcation is not proper because Plaintiff timely filed her administrative claims.[1]

This Court finds that bifurcation is not appropriate in this case. In essence, Defendant's argument is premised upon the assumption that it will win the failure to timely assert the administrative claim issue. The Court cannot accept this premise, however, as that would require it to assume the very thing that Defendant must prove. Furthermore, to the extent that Defendant's argument has merit and may bar Plaintiff's discrimination claim on the merits, the length of the entire trial-- estimated by both parties to be approximately four to five days-- is not sufficiently large as to raise serious concerns of expense and warrant bifurcation. Accordingly, the Court denies Defendant's Motion to Bifurcate.

B. <u>Motion in Limine</u>

[1] The parties also spill much of their ink over the merits of whether the Plaintiff timely filed her administrative claims. As this is an issue for trial, the Court does not address these arguments.

1. Time Barred Evidence

Defendant seeks to exclude all evidence of allegedly discriminatory conduct prior to July 20, 1995 because that date is 300 days prior to the date that Plaintiff filed her EEOC charge. If a plaintiff files a charge with a state or local agency, he or she has three hundred (300) days after the date of the alleged act of discrimination within which to file an administrative charge with the EEOC. See 42 U.S.C. § 2000e-5(e)(1) (1994). Pursuant to this part of Title VII and Federal Rules of Evidence 401, 402, and 403, Defendant argues that any evidence of discriminatory conduct prior to this date is irrelevant and highly prejudicial because any such acts are no longer actionable.

Under Federal Rule of Evidence 401, "'relevant evidence' means evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence." Fed. R. Evid. 401. "The standard of relevance established by [Rule 401] is not high." Carter v. Hewitt, 617 F.2d 961, 966 (3d Cir. 1980). Once the threshold of logical relevancy is satisfied, the matter is largely within the discretion of the trial court. See United States v. Steele, 685 F.2d 793, 808 (3d Cir. 1982). Federal Rule of Evidence 402 states: "All relevant evidence is admissible, expect as otherwise provided by the Constitution of the United States, by Act of Congress, by these rules, or by other rules

prescribed by the Supreme Court pursuant to statutory authority. Evidence which is not relevant is not admissible." Fed. R. Evid. 402.

Under Federal Rule of Evidence 403, relevant "evidence may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury." Fed. R. Evid. 403. "Rule 403 does not act to exclude any evidence that may be prejudicial, but only evidence the prejudice from which substantively outweighs its probative value. Prejudice within the meaning of Rule 403 involves identifying a special damage which the law finds impermissible." Charles E. Wagner, Federal Rules of Evidence Case Law Commentary 145 (1996-97) (footnotes omitted).

Defendant cites Rush v. Scott Specialty Gases, Inc., 113 F.3d 476 (3d Cir. 1997), for the proposition that "evidence of acts prior to the statutory time period is generally excludable under Rules 401, 402, and 403 of the Federal Rules of Evidence." See Def.'s Mem. in Support of Mot. in Limine at 7. The Court disagrees and finds that the Rush court held nothing of the sort.

In Rush, the jury found for the plaintiff under Title VII on two claims: a failure to promote claim and a sexual harassment claim. See Rush, 113 F.3d at 480. On appeal, the Third Circuit held that the district court erred in failing to recognize that plaintiff's failure to promote claim was time barred. See id. at

483. The court, however, reversed both verdicts concluding that it was prejudicial for the jury to hear evidence on the time barred claim. See id. at 485 ("Our review of the record compels the conclusion that the presence of the failure to promote and train claim and the introduction of evidence related to and supporting that claim infected the jury's liability verdicts on the sexual harassment and constructive discharge claims as well as the verdict for the damages."). The court, unable to distinguish the evidence between the two claims, remanded the case to the district court for a new trial on the sexual harassment claim. See id.

While the Third Circuit discussed the impact of the evidence of the time barred claim on the jury's consideration of the properly brought claim, by no means did the Court specifically hold that all time barred evidence is irrelevant and prejudicial as the Defendant characterizes. Rather, the Third Circuit discussed the evidence in terms of whether the court could permit the verdict on the properly brought claim to stand given the evidence the jury heard on the claim that was time barred.

While Rush is not directly on point, another Third Circuit case is on point. See Stewart v. Rutgers State Univ., 120 F.3d 426, 433 (3d Cir. 1997). In Stewart, an assistant professor sued his employer, a public university, alleging that the university denied tenure to him based on race discrimination. See id. at 428. The university denied him tenure in the 1992-93 school

year and in the 1994-94 school year. See id. The district court granted summary judgment for the university. See id. at 433. In deciding the summary judgment motion, the district court declined to consider a grievance committee report in 1992-93, that found the denial of tenure was arbitrary, because any claim based on the 1992-93 tenure denial was time barred. See id. The Third Circuit reversed and held that: "While the district court was correct in finding that any discrimination claim based on [plaintiff]'s 1992-93 tenure denial is time-barred, we reject the notion that the events surrounding that denial are not relevant evidence which [plaintiff] could use at trial [to show the 1994-95 tenure denial was racially discriminatory]." Thus, the Third Circuit held that evidence of discriminatory conduct which is time barred may be relevant in certain circumstances. See id.; see also United Air Lines v. Evans, 431 U.S. 553, 558 (1977) ("A discriminatory act which is not made the basis for a timely charge is the legal equivalent of a discriminatory act which occurred before the statute was passed. It may constitute relevant background evidence in a proceeding in which the status of a current practice is at issue, but separately considered, it is merely an unfortunate event in history which has no present legal consequences.").

In the case at bar, the Defendant asks this Court to prevent Plaintiff from presenting any evidence of discriminatory conduct if it is time barred. The Court cannot impose such a

blanket ruling. Because the Third Circuit in Stewart held that this type of evidence may be admitted in certain circumstances, the Court denies Defendant's request to exclude all Plaintiff's evidence that relates to allegedly discriminatory conduct prior to July 20, 1995. See also Roebuck v. Drexel Univ., 852 F.2d 715, 733 (3d Cir. 1988) (upholding admissibility of discriminatory comment by decision maker made five years before denial of tenure).

2. After the Fact Evidence

In an almost identical manner, the Defendant asks this Court to exclude all evidence that occurred after Plaintiff's termination as irrelevant and highly prejudicial. Defendant asserts that the critical question in a religious discrimination case is what was the intent of the decision maker at the time of discrimination. Thus, Defendant argues that any evidence after such termination is irrelevant and/or highly prejudicial.

After the fact evidence is often irrelevant to a person's intent, knowledge, or state of mind at an earlier time. See, e.g., Gulbranson v. Duluth, Misabe & Iron Range Railway Co., 921 F.2d 139, 142 (9th Cir. 1990); Arnold v. Riddell, Inc., 882 F, Supp. 979, 993 (D. Kan. 1995); Sealover v. Carey Canada, 793 F. Supp. 569, 579 (M.D. Pa. 1992). This case law, cited by the Defendant, clearly supports this proposition for personal injury actions. See, e.g., Gulbranson, 921 F.2d at 142 (finding the fact that railroad was aware of problem in railroad in 1985 not probative of

its knowledge of that problem in 1984); Arnold, 882 F. Supp. at 993 (finding video made six years after injury is irrelevant to prove warnings available in product liability case); Sealover v. Carey Canada, 793 F. Supp. at 579 (excluding evidence that manufacturer had knowledge of health risks posed by its product in 1961-62 where plaintiff had to prove manufacturer had knowledge prior to 1960). In the realm of discrimination, however, after the fact evidence possesses more relevance to a person's intent, knowledge, or state of mind. See Abrams v. Lightolies, Inc., 50 F.2d 1204, 1214 (3d Cir. 1995) ("Indeed, we have held that discriminatory comments by nondecisionmakers, or statement temporally remote from the decision at issue, may properly be used to build a circumstantial case of discrimination."); Lockhart v. Westinghouse Credit Corp., 879 F.2d 43, 54 (3d Cir, 1989) (finding age biased comment relevant even when made subsequent to plaintiff's termination).

In this case, Defendant asks this Court to exclude any evidence that Plaintiff offers if it occurred after the alleged racially discriminatory termination except as it relates to Plaintiff's grievance procedure. Again, the Court is unwilling to impose a blanket ruling without more specificity from the Defendant. The law in this circuit states that after the fact evidence may be admissible as circumstantial evidence to show discrimination. See id. (finding age biased comment relevant even when made subsequent to plaintiff's termination). Therefore, the

Court denies Defendant's request to exclude all Plaintiff's evidence that relates to conduct after September 27, 1995.

As a side note, the Court notes that if it were to agree with Defendant's after the fact evidence argument and Defendant's time barred argument above, this Court would have excluded Plaintiff's evidence before July 20, 1995 and after September 27, 1995. Besides background evidence, Plaintiff would then be required to prove her case within a two month and one week period despite the fact that she was employed by Defendant for many years. Given the difficult nature of proving discrimination and the necessity of discrimination plaintiffs to rely on circumstantial evidence, the Court refuses to impose such a burden on this Plaintiff. See Sheridan v. E.I. DuPont De Nemours & Co., 100 F.3d 1061, 1071 (3d Cir. 1996) ("Cases charging discrimination are uniquely difficult to prove and often depend upon circumstantial evidence."), cert. denied, 117 S. Ct. 2532 (1997).

3. Testimony of Dr. Wertheimer, Debby Chaess, and Jeff Chaess

At trial, Plaintiff seeks to offer evidence that she was assisting a patient, Debby Chaess, in critical condition while she was supposed to be providing intravenous fluids to the other patient as ordered by Dr. Wertheimer. Plaintiff also wants to call Mrs. Chaess' husband to testify to this point. Finally, Plaintiff offers the testimony of Dr. Wertheimer who apparently believes that

the delay in carrying out his order was excusable and finds that receipt of the disciplinary warning was not justified.

Defendant argues that this Court should exclude the testimony of these three proposed witnesses as irrelevant. Plaintiff states that her supervisor, Tom White, told her not to talk to Dr. Wertheimer concerning the disciplinary warning she received. Plaintiff argues that if she spoke to Dr. Wertheimer at that time, the warning may have been rescinded. Thus, Plaintiff counters that the testimony of Chaess and Wertheimer is relevant to show that this warning could have been avoided.

This Court finds that this evidence is not relevant. Relevant evidence is evidence that has any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence. Fed. R. Evid. 401. Evidence showing that Plaintiff ignored a doctor's orders in order to aid someone in critical condition, while admirable, does not make it any more or less probable that the Defendant discriminated against the Plaintiff because of her religion. Along the same lines, the doctor's further reflection on those events and subsequent conclusion that he may have been too harsh on his nurse does not make it any more probable that a decision maker at the Hospital fired Plaintiff because of her religion.

Moreover, while neither party addresses whether this evidence is relevant to pretext, this Court finds that any such argument lacks merit. Under the shifting burdens used in discrimination cases, a plaintiff may be required to prove the employer's proffered reason for the employment action was not the real reason, but rather, was pretextual. See St. Mary's Honor Ctr. v. Hicks, 509 U.S. 502, 508 (1993). Nevertheless, the proposed testimony of Debby Chaess, Jeff Chaess, and Dr. Wertheimer would not show that Defendant's reason was not the real reason. Rather, by offering this evidence, Plaintiff is trying to show that the Hospital was too harsh on the Plaintiff. This is not pretext. Plaintiff argues that Defendant should not have disciplined her in that instance, not that Defendant's real reason was not the true reason.

Finally, this evidence may have been relevant to Plaintiff's breach of implied contract claim. Nevertheless, this Court granted summary judgment for the Defendant on this claim. See Samuels v. Albert Einstein Med. Ctr., No. CIV.A.97-3448, 1998 WL 690107, at *8 (E.D. Pa. Sept. 16, 1998). Therefore, because the Court fails to see the relevance of this evidence to Plaintiff's discrimination claim, it will exclude the evidence.

4. Testimony of Deborah Dallen

Defendant next argues that the testimony of Deborah Dallen should be excluded because it has no relevance and is highly

prejudicial. Dallen will testify that Anne Marie Mayer, Plaintiff's Nurse Manager in 1986, said that she would never hire another nurse who required Fridays off. Defendant argues that this evidence is not relevant because the statement relates to hiring and was allegedly made more than seven years prior to termination. Defendant also argues that allowing this testimony would be highly prejudicial because it would inflame the jury. Plaintiff responds that this statement is relevant as it indicates "corporate bias against Sabbath-observant individuals."

Many courts state that the probative value of discriminatory remarks is significantly diminished by the temporal distance between the statements and the employment decision in question. See, e.g., Ezold v. Wolf, Block, Schorr & Solis-Cohen, 983 F.2d 509, 545 (3d Cir. 1993) (rejecting statements made five years prior to partnership decision and holding that "stray remarks by nondecision-makers or by decision-makers unrelated to the decision process are rarely given great weight, particularly if they were made temporally remote from the date of decision"); Frieze v. Boatmen's Bank of Belton, 950 F.2d 538, 541-42 (8th Cir. 1991) (determining that four year old remark made too long before employment decision to create inference of discrimination); McCarthy v. Kemper Life Ins. Cos., 924 F.2d 683, 687 (7th Cir. 1991) (disregarding discriminatory statements made two years prior to plaintiff's termination); Haskell v. Kaman Corp., 743 F.2d 113,

120 (2d Cir. 1984) (devaluing statements made three years or more before plaintiff's termination). While courts have indicated that the temporal distance to the decision in question decreases the probative value of the statement, nevertheless, these courts often admit the statements into evidence. See Roebuck, 852 F.2d at 733. In Roebuck, the Third Circuit considered the probative value of evidence of a discriminatory statement made over five years before the alleged discriminatory decision. See id. The court held that, while the statement standing alone was insufficient to uphold a finding of discrimination because of its temporal distance from the decision in question, the statement was still probative evidence that would support a finding of discrimination in connection with other evidence. See id.

This Court finds the reasoning employed in Roebuck persuasive. The Court will allow Dallen to testify to the statement because it finds the statement may be relevant to support Plaintiff's other evidence of discrimination.

Finally, Defendant argues that the statement was made by a non-decision maker and is therefore irrelevant on that ground. The Third Circuit has held that "discriminatory comments by nondecisionmakers, or statement temporally remote from the decision at issue, may properly be used to build a circumstantial case of discrimination." Abrams, 50 F.2d at 1214. Therefore, the Court

will allow the testimony to "build" a circumstantial case of discrimination.

5. Testimony of James MacElwee

Defendant makes numerous objections to the testimony of James MacElwee, a co-employee of the Plaintiff. Plaintiff offers MacElwee to testify that: (1) nurses were instructed not to communicate with Plaintiff following her discharge; (2) Plaintiff's name and phone number were blacked out of a phone book on the floor; (3) Plaintiff's demeanor changed following her discharge; (4) Plaintiff had an exemplary work ethic; and (5) Plaintiff complained about discrimination prior to her discharge. Defendant objects to the testimony above because it is irrelevant and hearsay. Although the Plaintiff does not address Defendant's hearsay argument, Plaintiff argues that MacElwee's testimony is relevant because he will testify that the Defendant treated Plaintiff's termination different than that of other employees.

The Court agrees with Defendant's argument that certain of MacElwee's testimony is irrelevant. Plaintiff offers MacElwee to testify, inter alia, that nurses were instructed not to communicate with Plaintiff after her termination and that Plaintiff's name and telephone number were blacked out of a phone book in the Hospital. This evidence has no relevance to the critical question of whether the Defendant fired the Plaintiff because of her religion. It is a common practice to delete the

names and phone numbers of terminated employees from the employment records. This would occur whether Plaintiff was terminated for her religion or not. Therefore, the Court will not permit Mr. MacElwee to testify concerning these matters.

Defendant next questions the relevancy of MacElwee's testimony concerning Plaintiff's demeanor following her discharge. While Plaintiff was no doubt quite upset that Defendant terminated her, the Court does not understand how that makes her more or less likely to have been subjected to religious discrimination. Therefore, Mr. MacElwee is precluded from testifying concerning this matter.

Defendant also challenges the admissibility of MacElwee's testimony concerning the Plaintiff's work ethic. Defendant argues that this testimony is not by a decision maker and, therefore, irrelevant. This Court disagrees. Plaintiff may be called upon to show that the Defendant's disciplinary justification for terminating the Plaintiff was pretextual. MacElwee's testimony, as a co-employee, that Plaintiff had a fine work ethic would tend to make it more likely that Defendant's justification that Plaintiff was disciplined for failing to maintain a certain quality of work was pretextual. Thus, the Court finds that this evidence is relevant and admissible.

Finally, Defendant contends that MacElwee's testimony that Plaintiff complained of discrimination to him prior to

discharge is hearsay not within a recognized exception. Without more information provided by the parties, this Court cannot rule on this objection. Therefore, the Court will reserve ruling on this issue until trial.

6. Testimony of Tom White

Finally, Defendant asks this Court to preclude Plaintiff from calling Tom White, Plaintiff's Nurse Manager and a key member of the termination of Plaintiff, as a witness. Defendant argues that Plaintiff seeks to introduce evidence of Mr. White's resignation which occurred two years after Plaintiff's termination. Defendant argues that this evidence is (1) after the fact evidence; (2) irrelevant; and (3) improper character evidence under Federal Rule of Evidence 404. Plaintiff responds that White lied about the events surrounding his resignation and, as a key witness, his credibility is at issue.

The simple fact that the events surrounding Mr. White's resignation took place after Plaintiff's termination does not in it of itself mean that it is irrelevant evidence. Mr. White may have resigned because he disagreed with the Defendant's alleged continued and persistent practice of discrimination. This Court was not provided any information by either party as to why Mr. White resigned. Without more, the Court is simply unwilling to prevent the Plaintiff from calling a witness, let alone a witness who was an important member in deciding to terminate Plaintiff,

because Defendant simply states that the events surrounding his termination are irrelevant.

Moreover, the Court is uncertain how White's testimony concerning his resignation is improper character testimony. Again, the parties provided no foundation indicating to this Court which part of White's proposed testimony constitutes improper character evidence. Therefore, the Court will deny Defendant's request at this time.

An appropriate Order follows.

IN THE UNITED STATES DISTRICT COURT
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SLYVIA SAMUELS	:	CIVIL ACTION
	:	
v.	:	
	:	
ALBERT EINSTEIN MEDICAL CENTER	:	NO. 97-3448

O R D E R

AND NOW, this 4th day of November, 1998, upon consideration of Defendant's Motion for Bifurcation of Trial and Defendant's Motion in Limine, IT IS HEREBY ORDERED that Defendant's Motion for Bifurcation of Trial is **DENIED** and Defendant's Motion in Limine is **GRANTED IN PART AND DENIED IN PART**.

IT IS FURTHER ORDERED THAT:

(1) The Defendant's request to preclude any evidence to challenge the merits of any employment decision made prior to July 20, 1995 is **DENIED**;

(2) The Defendant's request to preclude any evidence of conduct occurring after Plaintiff's termination on September 27, 1995 is **DENIED**;

(3) The Defendant's request to preclude the testimony of Debby and Jeff Chaess is **GRANTED**;

(4) The Defendant's request to preclude the testimony of Dr. John Wertheimer concerning the Plaintiff's care of one of his patients in December of 1994 is **GRANTED**;

(5) The Defendant's request to preclude the testimony of Deborah Dallen is **DENIED**;

(6) The Defendant's request to preclude the testimony of James MacElwee is **GRANTED** to the extent that Plaintiff offers Mr. MacElwee to testify concerning the blacking out of Plaintiff's name, instruction by the Defendant not to talk to the Plaintiff, and Plaintiff's demeanor following termination, but is **DENIED** in all other respects; and

(7) The Defendant's request to preclude the testimony of Tom White concerning the reasons for his resignation from employment with the Defendant is **DENIED**.

BY THE COURT:

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HERBERT J. HUTTON, J.